



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3853/P1

ARG: /.....

SAC

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

inserts

in 1/21  
wanted 1/23 end of day if possible

gen cart

1 AN ACT *gen cart*; relating to: the regulation of mortgage loan originators, mortgage  
2 brokers, and mortgage bankers.

*Analysis by the Legislative Reference Bureau*

INSERT ANAL → This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 224.71 (1br) of the statutes is created to read:  
4 224.71 (1br) "Bona fide nonprofit organization" means an organization that is  
5 described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal  
6 income tax under section 501 (a) of the Internal Revenue Code, that is certified by  
7 the federal department of housing and urban development or the Wisconsin Housing  
8 and Economic Development Authority, and that does all of the following:

1 (a) Promotes affordable housing or provides home ownership education or  
2 similar services.

3 (b) Conducts its activities in a manner that serves public or charitable  
4 purposes.

5 (c) Receives funding and revenue and charges fees in a manner that does not  
6 create an incentive for itself or its employees to act other than in the best interests  
7 of its clients.

8 (d) Compensates its employees in a manner that does not create an incentive  
9 for its employees to act other than in the best interests of its clients.

10 (e) Provides to, or identifies for, the borrower residential mortgage loans with  
11 terms favorable to the borrower and comparable to residential mortgage loans and  
12 housing assistance provided under government housing assistance programs.

13 <sup>λ</sup>  
**SECTION 2.** 224.71 (1c) of the statutes is amended to read:

14 224.71 (1c) "Branch office" means an office or place of business, other than the  
15 principal office, located in this state or another state, where a mortgage loan  
16 originator, mortgage banker, or mortgage broker ~~conducts business with residents~~  
17 of this state engages in the mortgage loan business subject to this subchapter.

**History:** 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

\*\*\*\*NOTE: I wonder if the removal of the reference to state residents in the last two lines of s. 224.71 (1c) makes the provision less clear as to what conduct is subject to regulation under this subchapter.

18 <sup>λ</sup>  
**SECTION 3.** 224.71 (1f) of the statutes is amended to read:

19 224.71 (1f) "Dwelling" has the meaning given in 15 USC 1602 (v) (w).

**History:** 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

20 **SECTION 4.** 224.71 (1g) of the statutes is created to read:

21 224.71 (1g) "Employee" means an individual whose manner and means of  
22 performance of work are subject to the right of control of, or are controlled by, a

1 person, and whose compensation for federal income tax purposes is reported, or  
2 required to be reported, on a W-2 form issued by the controlling person <sup>Λ</sup>

3 **SECTION 5.** 224.71 (1gh) of the statutes is created to read:

4 224.71 (1gh) (a) Except as provided in par. (b), "expungement" means to have  
5 ~~striken~~ or obliterated from a record of criminal conviction all references to the  
6 defendant's name and identity.

7 (b) For a criminal conviction entered in another state, "expungement" has the  
8 meaning given under the laws of the state where the criminal conviction is entered.

definition

\*\*\*\*NOTE: I'm not sure why a definition of expungement is necessary here. The term is used repeatedly in the statutes, without definition. Although the definition here seems to derive from an Attorney General opinion, it seems more relevant to the court's responsibilities than to DFI's.

9 **SECTION 6.** 224.71 (1h) of the statutes is amended to read:

10 224.71 (1h) "Federal banking agency" means the board of governors of the  
11 federal reserve system, the U.S. office of the comptroller of the currency, ~~the U.S.~~  
12 ~~office of thrift supervision~~, the national credit union administration, or the federal  
13 deposit insurance corporation.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

14 **SECTION 7.** 224.71 (1r) of the statutes is created to read:

15 224.71 (1r) "Housing finance agency" means any authority that is all of the  
16 following:

17 (a) Chartered by a state to help meet the affordable housing needs of the  
18 residents of the state.

19 (b) Supervised directly or indirectly by the state government.

20 (c) Subject to audit and review by the state in which it operates.

21 **SECTION 8.** 224.71 (2) (intro.) of the statutes is amended to read:

224.71 (2) (intro.) "Loan processor or underwriter" means an individual who, as an employee, performs clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator licensed under s. 224.725 or exempt from licensing under s. ~~224.726 (1)~~ 224.725 (1m), which clerical or support duties may include any of the following occurring subsequent to the receipt of a residential mortgage loan application:

*(intro), 1., 2., and 3.*  
**History:** 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1987 a. 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

**SECTION 9.** 224.71 (3) (a) *of the statutes* ~~is~~ *are* <sup>renumbered</sup> 224.71 (3) (intro.), (c), (d) and (e), and 224.71 (3) (intro.), as renumbered, is amended to read:

*(intro.)*  
224.71 (3) ~~"Mortgage banker"~~ <sup>"Mortgage banker"</sup> means a person who is ~~not excluded by par. (b)~~ <sup>and who</sup> does any of the following:

**SECTION 10.** 224.71 (3) (b) (intro.) and 7. of the statutes are repealed.

**SECTION 11.** 224.71 (3) (b) 8. of the statutes is renumbered 224.72 (1r) (a).

**SECTION 12.** 224.71 (3) (b) 9. of the statutes is renumbered 224.72 (1r) (b).

**SECTION 13.** 224.71 (3) (b) 10. of the statutes is renumbered 224.72 (1r) (d).

**SECTION 14.** 224.71 (3) (b) 11. of the statutes is renumbered 224.72 (1r) (g).

**SECTION 15.** 224.71 (3) (b) 12. of the statutes is renumbered 224.72 (1r) (h).

**SECTION 16.** 224.71 (4) of the statutes is repealed and recreated to read:

224.71 (4) "Mortgage broker" means a person who, for compensation or gain or in the expectation of compensation or gain, does any of the following but does not make an underwriting decision or close a residential mortgage loan:

(a) Assists a person in obtaining or applying to obtain a residential mortgage loan.

(b) Holds himself, herself, or itself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

1 (c) Engages in table funding.

\*\*\*\*NOTE: Do you want to repeal the definition of "finds" in s. 224.71 (1m)? The primary purpose of the definition seems to relate to language in s. 224.71 (4) that is being removed in this bill. The only other instance where the term "find" is used in a relevant way is in s. 224.77 (1) (q) 1. and 2. (intro.), 1. and 2. e are

2 SECTION 17. 224.71 (6) (a) of the statutes (is)renumbered 224.71 (6) (intro.), (c) and (d) (intro.) and 224.71 (6) (intro.) and (d) (intro.), as renumbered, are amended to read:

3 224.71 (6) (intro.) "Mortgage loan originator" means an individual who is not excluded  
4 by par. (b) and who, for compensation or gain or in the expectation of compensation  
5 or gain, does any all of the following:

6 (d) (intro.) Offers or negotiates terms of a residential mortgage loan. For purposes of  
7 this paragraph, an individual offers or negotiates terms of a residential mortgage  
8 loan if the individual does any of the following:

9 SECTION 18. 224.71 (6) (d) 1., 2. and 3. of the statutes are created to read:

10 224.71 (6) (d) 1. Discusses, explains, or presents for consideration by a  
11 borrower or prospective borrower particular residential mortgage loan terms.

12 2. Communicates directly or indirectly with a borrower or prospective borrower  
13 for the purpose of reaching a mutual understanding about prospective residential  
14 mortgage loan terms.

15 3. Recommends, or refers a borrower or prospective borrower to, a particular  
16 lender or recommends a set of residential mortgage loan terms.

17 SECTION 19. 224.71 (6) (b) (intro.) and 4. of the statutes are repealed.

18 SECTION 20. 224.71 (6) (b) 1. of the statutes is renumbered 224.725 (1m) (c) and  
19 amended to read:

20 224.725 (1m) (c) An individual engaged solely as a loan processor or  
21 underwriter, unless the individual is an independent contractor or represents to the  
22 public, through advertising or another means of communication such as the use of  
23

move to pg. 6 line 13

business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

**History:** 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

**SECTION 21.** 224.71 (6) (b) 2. of the statutes is renumbered 224.725 (1m) (d)

(intro.) and amended to read:

224.725 (1m) (d) (intro.) An individual who performs real estate brokerage activities only and is licensed under s. 452.03, unless the individual is compensated by a lender, mortgage broker, or another mortgage loan originator or by any agent of a lender, mortgage broker, or another mortgage loan originator. For purposes of this paragraph, an individual is not compensated by a lender, mortgage broker, or another mortgage loan originator or by an agent of a lender, mortgage broker, or another mortgage loan originator if any of the following apply:

**SECTION 22.** 224.71 (6) (b) 3. of the statutes is renumbered 224.725 (1m) (e).

**SECTION 23.** 224.71 (7) of the statutes is amended to read:

224.71 (7) "Nationwide mortgage licensing system and registry" means the licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensed mortgage loan originators and mortgage loan originators exempt from licensing under s. ~~224.726 (1)~~ <sup>✓</sup> 224.725 (1m) or, if this system is no longer maintained, any system established by the secretary of the federal department of housing and urban development under P.L. 110-289, Title V, section 1509.

**History:** 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597.

**SECTION 24.** 224.71 (8) of the statutes is repealed.

\*\*\*\*NOTE: As requested, this draft repeals the term "negotiate." The term is still used in ss. 224.71 (2) (b), 224.71 (6) (d) (as renumbered under this bill), and 224.77 (1) (q) 1. and 2., so the term will be undefined in these provisions after enactment of the bill.

Insert material  
from page 5

1           <sup>-y</sup>  
**SECTION 25.** 224.71 (13c) of the statutes is created to read:

2           224.71 (13c) "Registered entity" means a depository institution that  
3 voluntarily registers with the division for the purpose of sponsoring licensed  
4 mortgage loan originators that are under the depository institution's direct  
5 supervision and control.

6           <sup>x</sup>  
**SECTION 26.** 224.71 (13g) (intro.) of the statutes is created to read:

7           224.71 (13g) "Registered mortgage loan originator" means any individual who  
8 is all of the following:

9           <sup>x</sup>  
**SECTION 27.** 224.71 (13m) of the statutes is created to read:

10          224.71 (13m) "Regularly engage," with respect to an individual, means that  
11 any of the following applies:

12          (a) The individual engaged in the business of a mortgage loan originator on  
13 more than 5 residential mortgage loans, in this state or another state, in the previous  
14 calendar year or expects to engage in the business of a mortgage loan originator on  
15 more than 5 residential mortgage loans, in this state or another state, in the current  
16 calendar year.

17          (b) The individual is acting on behalf of a person who is, or is required to be,  
18 licensed as a mortgage lender, mortgage banker, or mortgage broker in this state or  
19 another state.

20          (c) The individual is acting on behalf of a registered entity.

21          <sup>x</sup>  
**SECTION 28.** 224.72 (1m) of the statutes is amended to read:

22          224.72 (1m) LICENSE REQUIRED. <sup>/</sup> ~~A~~ <sup>/</sup> Except as provided in sub. (1r), a person may  
23 not conduct business or act as a mortgage banker or mortgage broker, use the title  
24 "mortgage banker" or "mortgage broker," or advertise or otherwise portray himself,

1 herself, or itself as a mortgage banker or mortgage broker, unless the person has been  
2 issued a mortgage banker or mortgage broker license by the division.

**History:** 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 40.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32; 2003 a. 260; 2007 a. 20; 2009 a. 2; 2013 a. 36.

3 **SECTION 29. 224.72 (1r) (intro.), (c), (e) and (f) of the statutes are created to read:**

4 **224.72 (1r) LICENSE EXEMPTIONS.** <sup>(intro.)</sup> The following persons shall not be required

5 to be licensed under this section or comply with the other provisions of this section:

6 (c) A federal, state, or local government agency or housing finance agency.

7 (e) A bona fide nonprofit organization that does not operate in a commercial  
8 context and that is exempt under this paragraph. To qualify for an exemption under  
9 this paragraph, an organization shall certify, on a form prescribed by the division,  
10 that it is a bona fide nonprofit organization and shall provide documentation as  
11 required by the division. To maintain this exemption, the organization shall file the  
12 prescribed certification and accompanying documentation with the division by  
13 December 31 of each year.

14 (f) A mortgage banker that meets all of the following criteria:

15 1. The mortgage banker engaged in the business of a mortgage banker on 5 or  
16 fewer residential mortgage loans during the previous calendar year.

17 2. The mortgage banker expects to serve as the prospective source of financing,  
18 or to perform other phases of origination or servicing, on 5 or fewer residential  
19 mortgage loans in the current calendar year.

20 3. The mortgage banker does not advertise or otherwise hold himself, herself,  
21 or itself out as a "mortgage banker."

22 **SECTION 30. 224.72 (2) (c) 2.** <sup>as affected by 2013 Wisconsin Act 36</sup> of the statutes <sup>is</sup> amended to read:

23 224.72 (2) (c) 2. The ~~department~~ division may not disclose any information  
24 received under subd. 1. to any person except as follows:



1 a. The ~~department~~ division may disclose information under subd. 1. to the  
2 department of revenue for the sole purpose of requesting certifications under s.  
3 73.0301 and to the department of workforce development for the sole purpose of  
4 requesting certifications under s. 108.227.

5 b. The ~~department~~ division may disclose information under subd. 1. a. to the  
6 department of children and families in accordance with a memorandum of  
7 understanding under s. 49.857.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 449.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32; 2003 a. 260; 2007 a. 20; 2009 a. 2; 2013 a. 36.

8 **SECTION 31.** 224.72 (2m) of the statutes is renumbered 224.72 (2m) (a).

9 **SECTION 32.** 224.72 (2m) (b) and (c) of the statutes are created to read:

10 224.72 (2m) (b) A principal office of a mortgage banker or mortgage broker  
11 shall be located in either this state or another state. A principal office may not be  
12 located in a residence.

13 (c) A branch office of a mortgage banker or mortgage broker shall be located in  
14 either this state or another state. A branch office may be located in a residence.

15 **SECTION 33.** 224.72 (4) (a) 2. of the statutes is amended to read:

16 224.72 (4) (a) 2. File with the division a commercial surety bond which is in the  
17 amount of \$300,000 for a mortgage banker or \$120,000 for a mortgage broker, is  
18 issued by a surety company authorized to do business in this state, secures the  
19 applicant's faithful performance of all duties and obligations of a mortgage banker  
20 or mortgage broker, is payable to the division for the benefit of persons to whom the  
21 mortgage banker or mortgage broker provided services as a mortgage banker or  
22 mortgage broker, is issued on a form that is acceptable to the division and provides

1 that the bond may not be terminated without at least ~~30~~ 60 days' written notice to  
2 the division.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32; 2003 a. 260; 2007 a. 20; 2009 a. 2; 2013 a. 36.

3 **SECTION 34.** 224.72 (4n) of the statutes is repealed.

4 **SECTION 35.** 224.722 of the statutes is created to read:

5 **224.722 Registered entities. (1)** A depository institution may apply for  
6 registered entity status with the division. The application shall be on forms and in  
7 the manner prescribed by the division and the applicant shall pay the fee specified  
8 by the division. The application shall be accompanied by a commercial surety bond  
9 in the amount of \$300,000 that is issued by a surety company authorized to do  
10 business in this state and is written on a form that is acceptable to the division.

11 **(2)** Upon the filing of an application for registered entity status and the  
12 payment of the required fee, the division shall make an investigation of the  
13 applicant. If the application is complete, and the division has no concerns regarding  
14 the applicant's character, general fitness, or financial responsibility, the division  
15 shall register the applicant as a registered entity.

16 **(3)** Each registered entity shall obtain and maintain a license for each branch  
17 office where a mortgage loan originator sponsored by the registered entity engages  
18 in business as a mortgage loan originator.

19 **(4)** A registered entity shall increase its surety bond by \$10,000 for each  
20 licensed branch office when the number of its branch offices exceeds 5.

21 **(5)** A depository institution's registered entity status expires on December 31  
22 of each year.

23 **(6)** A registered entity may apply to renew its registered entity status by timely  
24 submitting, on forms and in the manner prescribed by the division, a completed

renewal application and all required renewal fees. The division may not renew registered entity status under this section unless the division finds that the registered entity continues to meet the minimum standards for registration under this section.

(7) If a registered entity fails to satisfy the minimum standards for renewal of its registration, its registration shall expire.

(8) A registered entity shall cooperate with, and provide access to records and documents required by, the division to carry out examinations in accordance with s. 224.74 (2) of mortgage loan originators that are sponsored by the registered entity.

**SECTION 36.** 224.725 (1) of the statutes is amended to read:

224.725 (1) LICENSE REQUIRED. Except as provided in s. 224.726 sub. (1m), an individual may not regularly engage in the business of a mortgage loan originator with respect to a residential mortgage loan, or use the title "mortgage loan originator," advertise, or otherwise portray himself or herself as a mortgage loan originator in this state, unless the individual has been issued by the division, and thereafter maintains, a license under this section. Each licensed mortgage loan originator shall register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

History: 2009 a. 2 ss. 607, 621, 634; 2009 a. 386; 2011 a. 209; 2013 a. 200.

**SECTION 37.** 224.725 (1m) (intro.), (a), (b), (d) 1. and 2., (f) and (g) 1., 2. and 3.

of the statutes are created to read:

(intro.)

224.725 (1m) LICENSE EXEMPTIONS. The following individuals are not required

to be licensed under this section:

(a) A registered mortgage loan originator.

Insert 11-22

1 (b) An employee of a federal, state, or local government agency or housing  
2 finance agency who acts as a mortgage loan originator only pursuant to his or her  
3 official duties as an employee of the federal, state, or local government agency or  
4 housing finance agency.

5 (d) 1. The individual is paid by a mortgage loan originator or creditor on behalf  
6 of a buyer or seller solely for performing real estate brokerage activities.

7 2. The individual is paid by a mortgage loan originator or creditor, or agent or  
8 affiliate of the mortgage loan originator or creditor, solely for performing real estate  
9 brokerage activities in connection with a property owned by the mortgage loan  
10 originator or creditor.

11 (f) An employee of a bona fide nonprofit organization who acts as a mortgage  
12 loan originator only in connection with his or her work duties to the bona fide  
13 nonprofit organization and only with respect to residential mortgage loans with  
14 terms that are favorable to the borrower.

15 (g) 1. These activities are considered by the Wisconsin Supreme Court to be part  
16 of the authorized practice of law within Wisconsin.

17 2. These activities are carried out within an attorney–client relationship.

18 3. The attorney carries out the activities in compliance with all applicable laws,  
19 rules, and ethics standards.

20 **SECTION 38.** 224.725 (2) (d) of the statutes is repealed.

21 **SECTION 39.** 224.725 (3) (b) of the statutes is amended to read:

22 224.725 (3) (b) The applicant has not been convicted of, or pled guilty or no  
23 contest to, a felony in a domestic, foreign, or military court during the 7–year period  
24 preceding the date of the application or, for a felony involving an act of fraud,  
25 dishonesty, breach of trust, or money laundering, at any time preceding the date of

1 the application. ~~This paragraph does not apply with~~ With respect to any conviction  
2 for which the applicant has received a pardon or expungement of the conviction, the  
3 pardoned or expunged conviction shall not result in an automatic denial or  
4 revocation of a mortgage loan originator license. The division may consider the  
5 underlying crime, facts, or circumstances of a pardoned or expunged felony  
6 conviction when determining the eligibility of an applicant for licensure under this  
7 paragraph and par. (c).

History: 2009 a. 2 ss. 607, 621, 634; 2009 a. 386; 2011 a. 209; 2013 a. 36.

8 **SECTION 40.** 224.725 (4) (a) of the statutes is amended to read:

9 224.725 (4) (a) Each mortgage loan originator shall be covered by a surety bond  
10 in accordance with this subsection. A surety bond of a mortgage banker ~~or~~, mortgage  
11 broker, or registered entity meeting the requirements of par. (b) and s. 224.72 (4) (a)  
12 2. or 224.722 (1) and (4) may satisfy the requirement under this paragraph for a  
13 mortgage loan originator who, ~~under sub. (2) (d), identifies himself or herself as~~  
14 employed is sponsored by the mortgage banker ~~or~~, mortgage broker, or registered  
15 entity.

History: 2009 a. 2 ss. 607, 621, 634; 2009 a. 386; 2011 a. 209; 2013 a. 36.

16 **SECTION 41.** 224.726 (title), (intro.), (1) (intro.), (2) and (3) of the statutes are  
17 repealed.

18 **SECTION 42.** 224.726 (1) (a) and (b) of the statutes are renumbered 224.71 (13g)  
19 (a) and (b).

20 **SECTION 43.** 224.726 (4) of the statutes is renumbered 224.725 (1m) (g) (intro.)  
21 and amended to read:

22 224.725 (1m) (g) <sup>(intro.)</sup> A licensed attorney who negotiates the terms of a residential  
23 mortgage loan on behalf of a client as an ancillary matter to the attorney's  
24 representation of the client, unless the attorney is compensated by a lender,

1 ~~mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage~~  
2 ~~broker, or mortgage loan originator.~~ undertakes activities described in s. 224.71 (6)  
3 if all of the following apply:

History: 2009 a. 2.

4 **SECTION 44.** 224.73 (title) of the statutes is amended to read:

5 **224.73 (title) Relationship between mortgage loan originator and**  
6 **either a mortgage banker or a mortgage broker, or registered entity;**  
7 **branch offices.**

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2.

8 **SECTION 45.** 224.73 (1) of the statutes is amended to read:

9 **224.73 (1) RESPONSIBILITY FOR MORTGAGE LOAN ORIGINATOR.** A mortgage banker  
10 ~~or, mortgage broker, or registered entity~~ is responsible for, and shall supervise the  
11 acts of, a mortgage loan originator or any other person who otherwise acts on behalf  
12 of the mortgage banker ~~or, mortgage broker, or registered entity~~.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2.

13 **SECTION 46.** 224.73 (2) of the statutes is amended to read:

14 **224.73 (2) RESTRICTION ON MORTGAGE LOAN ORIGINATOR.** (a) If the division  
15 suspends or revokes a mortgage banker's or mortgage broker's license or a registered  
16 entity's registration, a mortgage loan originator may not act on behalf of that  
17 mortgage banker ~~or, mortgage broker, or registered entity~~ during the period of  
18 suspension or revocation.

19 (b) A mortgage loan originator may act on behalf of only the mortgage banker  
20 ~~or, mortgage broker, or registered entity~~ with which that mortgage loan originator's  
21 license is associated in the records of the division, ~~as designated under s. 224.725 (2)~~  
22 (d). A mortgage loan originator's license may only be associated with one mortgage  
23 banker ~~or, mortgage broker, or registered entity~~ at a time.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2.

✕

1           **SECTION 47.** 224.73 (3) of the statutes is amended to read:

2           **224.73 (3) TRANSFER BY MORTGAGE LOAN ORIGINATOR.** (a) A licensed mortgage  
3       loan originator may apply, on forms and in the manner prescribed by the division,  
4       to transfer association to another licensed mortgage banker or mortgage broker or  
5       a registered entity. The division shall promulgate rules establishing a fee for a  
6       transfer application under this subsection.

7           (b) A mortgage loan originator may not act on behalf of a mortgage banker or,  
8       mortgage broker, or registered entity until the mortgage loan originator's license  
9       association has been transferred to that mortgage banker or, mortgage broker, or  
10      registered entity in the records of the division.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. ✕ 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2.

11           **SECTION 48.** 224.73 (4) (title) and (a) of the statutes are repealed.

✕

12           **SECTION 49.** 224.73 (4) (b) of the statutes is renumbered 224.77 (1) (sn) and  
13       amended to read:

14           224.77 (1) (sn) ~~Any person originating a residential mortgage loan shall~~ As a  
15       mortgage banker, mortgage broker, or mortgage loan originator, fail to clearly place  
16       ~~the person's~~ his, her, or its unique identifier on all residential mortgage loan  
17       application forms, solicitations, and advertisements, including business cards or  
18       Web, Internet sites, email signature blocks, and on all other documents specified by  
19       rule of the division.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. ✕ 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2.

20           **SECTION 50.** 224.73 (5) of the statutes is created to read:

21           **224.73 (5) MORTGAGE LOAN ORIGINATORS AND BRANCH OFFICES.** (a) A mortgage  
22       loan originator shall be assigned to and work out of a licensed principal office or  
23       branch office of the sponsoring mortgage banker, mortgage broker, or registered

1 entity. This office shall either be the mortgage loan originator's residence or be  
2 within 100 miles of the mortgage loan originator's residence.

\*\*\*\*NOTE: Under the definition of "branch office" in s. 224.71 (1c), it appears that any location where business is conducted and which is not a principal office is a branch office. I have therefore used the term "branch office" in various places in this draft instead of the term "location."

\*\*\*\*NOTE: For a mortgage loan originator that is not working out of his or her residence, prohibiting the mortgage loan originator from working in an office that is more than 100 miles from his or her residence may raise constitutional issues.

3 (b) At each branch office of a mortgage banker or registered entity at which  
4 residential mortgage loans are originated for the mortgage banker or registered  
5 entity or for another person, and at each branch office of a mortgage broker, there  
6 shall be at least one licensed mortgage loan originator assigned to and working out  
7 of the office. If an individual is identified as a branch manager for the office, either  
8 in the records of the division or in the records of the mortgage banker, mortgage  
9 broker, or registered entity, the individual must be licensed as a mortgage loan  
10 originator.

✕

11 **SECTION 51.** 224.74 (title) of the statutes is amended to read:

12 **224.74 (title) Division's review of the operations of a mortgage loan**  
13 **originator, mortgage broker, ~~or~~, mortgage banker, or registered entity.**

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74; 1997 a. 145; 2009 a. 2.

14 **SECTION 52.** 224.74 (1) (title) of the statutes is amended to read:

15 **224.74 (1) (title) ~~ANNUAL CALL~~ CALL REPORTS; AUDITS.**

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74; 1997 a. 145; 2009 a. 2.

16 **SECTION 53.** 224.74 (1) (a) of the statutes is amended to read:

17 **224.74 (1) (a) *Annual Mortgage call report.* Each year, ~~by the date and in the~~**  
18 **~~form required by the nationwide mortgage licensing system and registry, each~~**  
19 **mortgage banker, mortgage broker, and mortgage loan originator licensed under this**  
20 **~~subchapter, and each registered entity, shall submit to the nationwide mortgage~~**



1      licensing system and registry ~~an annual report~~ reports of condition, which shall be  
2      in such form and contain such information as the nationwide mortgage licensing  
3      system and registry may require.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. ~~1987~~ s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74; 1997 a. 145; 2009 a. 2.

4      **SECTION 54.** 224.74 (1) (b) of the statutes is amended to read:

5            224.74 (1) (b) *Audit requirement for mortgage bankers.* Each year, no later than  
6      6 months following the end of its most recently completed fiscal year, each mortgage  
7      banker ~~or mortgage broker~~ shall submit a copy of an audit of the mortgage banker's  
8      ~~or mortgage broker's~~ operations during that fiscal year. An audit under this  
9      paragraph shall be conducted by an independent certified public accountant in  
10     accordance with generally accepted auditing standards. The financial statements  
11     in the audit report shall be prepared in accordance with generally accepted  
12     accounting principles.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. ~~1987~~ s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74; 1997 a. 145; 2009 a. 2.

13     **SECTION 55.** 224.74 (1) (bm) of the statutes is created to read:

14           224.74 (1) (bm) *Reviewed financial statements for mortgage brokers.* Each year,  
15     no later than 6 months following the end of its most recently completed fiscal year,  
16     each mortgage broker shall submit a copy of the mortgage broker's reviewed  
17     financial statements for the mortgage broker's operations during that fiscal year.  
18     The reviewed financial statements shall include a balance sheet, an income  
19     statement, and a written statement by an independent certified public accountant  
20     attesting that he or she has conducted his or her review in accordance with generally  
21     accepted accounting principles and professional standards of the American Institute  
22     of CPAs.

\*\*\*\*NOTE: I note that under s. 224.74 (2) (ag) (intro.), the division has certain  
enforcement authority against "persons ... otherwise subject to the provisions of this  
subchapter," which would include registered entities. However, under s. 224.74 (2) (c),

without amendment of that provision, the division would be unable to recover its costs of enforcement.

<sup>X</sup>  
1       **SECTION 56.** 224.75 (2) of the statutes is amended to read:

2       **224.75 (2) PERIOD OF RECORD RETENTION.** A mortgage banker or mortgage broker  
3 shall keep for at least 36 months, in an office of the mortgage banker or mortgage  
4 broker licensed under this subchapter but one that is not located in a residence, all  
5 books and records that, in the opinion of the division, will enable the division to  
6 determine whether the mortgage banker or mortgage broker is in compliance with  
7 the provisions of this subchapter. These books and records include copies of all  
8 deposit receipts, canceled checks, trust account records, the records which a  
9 mortgage banker or mortgage broker maintains under sub. (1) (c) or (d), and other  
10 relevant documents or correspondence received or prepared by the mortgage banker  
11 or mortgage broker in connection with a residential mortgage loan or residential  
12 mortgage loan application. The retention period begins on the date the residential  
13 mortgage loan is closed or, if the loan is not closed, the date of loan application. If  
14 the residential mortgage loan is serviced by a mortgage banker, the retention period  
15 commences on the date that the loan is paid in full.

<sup>X</sup>  
History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.75; 1995 a. 27 s. 6596; Stats. 1995 s. 224.75; 1997 a. 145; 2007 a. 211; 2009 a. 2.

16       **SECTION 57.** 224.755 (4) (d) of the statutes is amended to read:

17       **224.755 (4) (d)** An individual may ~~retake~~ take a test 3 consecutive times, with  
18 each ~~test retaken no less than~~ retest occurring at least 30 days after the preceding  
19 test. If the individual fails 3 consecutive tests, the individual may not retake a test  
20 again for at least 6 months.

<sup>X</sup>  
History: 2003 a. 260; 2009 a. 2.

21       **SECTION 58.** 224.755 (4) (e) of the statutes is amended to read:

22       **224.755 (4) (e)** If an individual previously licensed as a mortgage loan  
23 originator fails to maintain a valid license for a period of 5 years or longer, not taking

1 into account any time during which the individual is a registered loan originator, the  
2 individual shall retake the test under par. (a). ~~For purposes of determining the~~  
3 ~~5-year period, the division shall not consider any period during which the individual~~  
4 ~~is exempt from licensing under s. 224.726 (1).~~

History: 2003 a. 260; 2009 a. 2.

5 **SECTION 59.** 224.77 (title) of the statutes is amended to read:

6 **224.77 (title) Prohibited acts and practices, and discipline, of mortgage**  
7 **bankers, mortgage loan originators, and mortgage brokers, and registered**  
8 **entities.**

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

9 **SECTION 60.** 224.77 (1) (intro.) of the statutes is amended to read:

10 **224.77 (1) PROHIBITED ACTS AND PRACTICES.** (intro.) No mortgage banker,  
11 mortgage loan originator, ~~or~~ mortgage broker, or, with respect to pars. (f), (fg), (g),  
12 (gd), and (gh), registered entity, and no member, officer, director, principal, partner,  
13 trustee, or other agent of a mortgage banker ~~or~~, mortgage broker, or registered entity  
14 may do any of the following:

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

15 **SECTION 61.** 224.77 (1) (f) of the statutes is amended to read:

16 **224.77 (1) (f)** Accept a commission, money, or other thing of value for  
17 performing an act as a mortgage loan originator unless the payment is from ~~a~~ the  
18 mortgage banker ~~or~~, mortgage broker, or registered entity with whom the mortgage  
19 loan originator's license is associated, as identified in the records of the division at  
20 the time the act is performed.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

21 **SECTION 62.** 224.77 (1) (fg) of the statutes is amended to read:

22 **224.77 (1) (fg)** As a mortgage banker ~~or~~, mortgage broker, or registered entity,  
23 pay a commission, money, or other thing of value to any person for performing an act

1 as a mortgage loan originator unless the mortgage loan originator's license is  
2 associated with the mortgage banker ~~or~~, mortgage broker, or registered entity in the  
3 records of the division at the time the act is performed.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

4 **SECTION 63.** 224.77 (1) (g) of the statutes is amended to read:

5 224.77 (1) (g) As a mortgage loan originator, represent or attempt to represent  
6 a mortgage banker ~~or~~, mortgage broker, or registered entity other than the mortgage  
7 banker ~~or~~, mortgage broker, or registered entity with whom the mortgage loan  
8 originator's license was associated, as identified in the records of the division at the  
9 time the representation or attempted representation occurs.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

10 **SECTION 64.** 224.77 (1) (gd) of the statutes is amended to read:

11 224.77 (1) (gd) As a mortgage banker ~~or~~, mortgage broker, or registered entity,  
12 permit a person who is not licensed under this subchapter to act as a mortgage loan  
13 originator on behalf of the mortgage banker ~~or~~, mortgage broker, or registered entity.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

\*\*\*\*NOTE: Among the provisions in s. 224.77 (1) that apply to registered entities,  
do you want to include s. 224.77 (1) (t) and (tm)? As I read them, ss. 224.74 (2) and 224.75  
(6) apply to registered entities.

✕

14 **SECTION 65.** 224.77 (1) (gh) of the statutes is amended to read:

15 224.77 (1) (gh) As a mortgage banker ~~or~~, mortgage broker, or registered entity,  
16 permit a person whose mortgage loan originator license is not associated in the  
17 records of the division with the mortgage banker ~~or~~, mortgage broker, or registered  
18 entity to act as a mortgage loan originator on behalf of the mortgage banker ~~or~~,  
19 mortgage broker, or registered entity.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

20 **SECTION 66.** 224.77 (1) (sm) and (sq) of the statutes are created to read:

1           224.77 (1) (sm) As a mortgage loan originator, fail to identify his or her name  
2 and sign the mortgage loan application for a loan originated by him or her.

3           (sq) As a mortgage banker, mortgage broker, or mortgage loan originator, use  
4 any solicitation or advertisement to which any of the following applies:

5           1. The solicitation or advertisement misrepresents that the provider is, or is  
6 affiliated with, any governmental entity or other organization.

7           2. The solicitation or advertisement misrepresents that the product is or relates  
8 to a government benefit, or is endorsed, sponsored by, or affiliated with any  
9 government or government-related program, including through the use of formats,  
10 symbols, or logos that resemble those of such entity, organization, or program.

11           3. The solicitation or advertisement does not clearly and conspicuously identify  
12 the name of the mortgage broker or mortgage banker.

      \*\*\*\*NOTE: With regard to created s. 224.77 (1) (sq) 3., what if the solicitation or  
advertisement is from a mortgage loan originator sponsored by a registered entity?

13           **SECTION 67.** 224.77 (2m) (a) 1. (intro.), a. and b. of the statutes are amended  
14 to read:

15           224.77 (2m) (a) 1. <sup>(intro.)</sup> In addition to any other authority provided to the division  
16 under this subchapter, if the division finds that a mortgage banker, mortgage loan  
17 originator, or mortgage broker has violated any provision of this subchapter or any  
18 rule promulgated by the division under this subchapter, or a registered entity has  
19 violated any applicable provision of this subchapter, the division may do any of the  
20 following:

21           a. Deny any application for initial issuance or renewal of a license or  
22 registration.

b. Revoke, suspend, limit, or condition any license of the mortgage banker, mortgage loan originator, or mortgage broker or registration of the registered entity.

**History:** 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36.

\*\*\*\*NOTE: If registered entity is added to s. 224.77 (2m) (a) 1., should it also be added to any of the following: s. 224.77 (2m) (a) 2., (b), (3), (3m), or (4)?

**SECTION 68.** 224.83 of the statutes is repealed.

**SECTION 69.** 943.80 (2) of the statutes is amended to read:

943.80 (2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c), a savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, a trust company, a credit union, as defined in s. 186.01 (2), a mortgage banker, as defined in s. 224.71 (3) (a), or a mortgage broker, as defined in s. 224.71 (4) (a), whether chartered under the laws of this state, another state or territory, or under the laws of the United States; a company that controls, is controlled by, or is under common control with a bank, a savings bank, a savings and loan association, a trust company, a credit union, a mortgage banker, or a mortgage broker; or a person licensed under s. 138.09, other than a person who agrees for a fee to hold a check for a period of time before negotiating or presenting the check for payment and other than a pawnbroker, as defined in s. 138.10 (1) (a).

**History:** 2005 a. 212.

(END)

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3853/P1ins

ARG:.....

**INSERT ANAL:**

Under current law, with certain exceptions, a person may not engage in business as, or otherwise act as, a mortgage banker, mortgage broker, or mortgage loan originator unless the person is licensed as such with the Department of Financial Institutions (DFI). A mortgage banker is, with certain exceptions, a person who originates residential mortgage loans (loans) for itself or for another person; sells loans or interests in loans to another person; or services loans or provides escrow services. A mortgage broker is, with certain exceptions, a person who, on behalf of a loan applicant or an investor and for commission or other compensation, finds a loan or negotiates a loan or loan commitment. A mortgage loan originator is, with certain exceptions, an individual who takes a loan application or offers or negotiates terms of a loan for compensation or gain. State and federally chartered financial institutions (depository institutions) are not mortgage bankers or mortgage brokers and are not required to be licensed as such. Beginning on January 1, 2010, provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 were adopted into state law, including provisions requiring that certain state licensing and registration functions be conducted through the Nationwide Mortgage Licensing System and Registry (NMLSR).

This bill modifies the definitions of mortgage loan originator, mortgage broker, and mortgage banker. Under the bill, to be a mortgage loan originator, an individual must *both* take residential mortgage loan applications *and* offer or negotiate terms of residential mortgage loans, whereas under current law an individual is a mortgage loan originator if the individual does either. The bill specifies circumstances under which an individual is considered to offer or negotiate terms of a loan. Current law includes provisions that create exceptions to the definition of mortgage loan originator and provisions that exempt a mortgage loan originator from regulation. This bill eliminates exceptions to the definition of mortgage loan originator and recreates them as licensing exemptions. The bill also modifies certain of these exemptions and creates new ones, including for certain employees of a government agency, housing finance agency, or bona fide nonprofit organization. Also under the bill, an individual must be licensed as a mortgage loan originator only if the individual regularly engages in business as a mortgage loan originator, with the term "regularly engage" defined in the bill.

The bill recreates the definition of mortgage broker to mean a person who, for compensation or gain or in the expectation of compensation or gain, does any of the following but does not make an underwriting decision or close a loan: 1) assists a person in obtaining or applying to obtain a loan; 2) holds oneself out as being able to assist a person in obtaining or applying to obtain a loan; or 3) engages in table funding. Current law provisions that are exceptions to the definition of mortgage

broker and mortgage banker are recreated in the bill as licensing exemptions and the bill also creates new exemptions, including for a government agency, housing finance agency, or bona fide nonprofit organization or a mortgage banker with limited transactions each year..

Under current law, DFI may not issue a mortgage loan originator license to an applicant with an unpardoned felony conviction within seven years prior to the application or, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering, at any time.

Under this bill, DFI may consider a pardoned or expunged felony conviction and a pardoned or expunged felony conviction does not automatically disqualify an individual from being issued a mortgage loan originator license.

Under current law, an applicant for a mortgage loan originator license must include in the application the name of the mortgage banker or mortgage broker who will employ the applicant as a mortgage loan originator. A mortgage loan originator may act on behalf of only the mortgage banker or mortgage broker with which that mortgage loan originator's license is associated in DFI's records, and a mortgage loan originator's license may be associated with only one mortgage banker or mortgage broker at a time. This mortgage banker or mortgage broker is responsible for, and must supervise the acts of, the mortgage loan originator with whom it is associated.

This bill allows a licensed mortgagor loan originator to associate with (be sponsored by) a depository institution, rather than a mortgage banker or mortgage broker, if the depository institution first registers with DFI. If the depository institution applies to DFI and meets certain requirements, DFI must register the depository institution as a "registered entity" and the depository institution may then sponsor licensed mortgage loan originators under the depository institution's supervision and control. The provisions of current law, discussed above, relating to the relationship between a mortgage banker or mortgage broker and a licensed mortgage loan originator also apply with respect to a registered entity that sponsors a mortgage loan originator. A registered entity must also submit reports of condition to the NMLSR and cooperate with, and provide access to records and documents required by, DFI to carry out examinations of licensed mortgage loan originators sponsored by the registered entity. Certain acts or practices that are prohibited by a mortgage banker or mortgage broker with respect to a mortgage loan originator are also prohibited by a registered entity.

Current law requires each mortgage banker, mortgage broker, and mortgage loan originator to annually submit to the NMLSR a report of condition containing information required by the NMLSR. In addition, each mortgage banker or mortgage broker must annually submit a copy of an audit of the mortgage banker's or mortgage broker's operations during the prior fiscal year. The audit must be conducted by an independent certified public accountant (CPA) in accordance with generally accepted auditing standards. The financial statements in the audit report must be prepared in accordance with generally accepted accounting principles (GAAP).

In addition to requiring registered entities to submit to the NMLSR reports of condition, this bill eliminates the requirement that reports of condition be submitted



to the NMLSR annually, leaving unspecified the frequency of submissions. The bill also eliminates the annual audit requirement for mortgage brokers. Under the bill, a mortgage broker must instead annually submit reviewed financial statements for the mortgage broker's operations during the prior fiscal year. The reviewed financial statements must include certain materials, including a written statement by an independent CPA attesting that he or she conducted his or her review in accordance with GAAP.

The bill also specifies that principal offices and branch offices of mortgage bankers and mortgage brokers must be located in this state or another state and that a branch office, but not a principal office, may be located in a residence. A mortgage loan originator must be assigned to and work out of a licensed principal office or branch office of the sponsoring mortgage banker, mortgage broker, or registered entity and the office must be the mortgage loan originator's residence or within 100 miles of this residence. There must be at least one licensed mortgage loan originator assigned to and working out of each branch office of a mortgage broker or of a mortgage banker or registered entity where loans are originated.

The bill also prohibits a mortgage banker, mortgage broker, or mortgage loan originator from using any solicitation or advertisement that: 1) misrepresents that the provider is, or is affiliated with, any governmental entity or other organization; 2) misrepresents that the product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or government-related program; or 3) does not clearly and conspicuously identify the name of the mortgage broker or mortgage banker. The bill also repeals a provision prohibiting an individual engaging solely in loan processor or underwriter activities from representing to the public that the individual can or will perform the activities of a mortgage loan originator.

#### **INSERT 8-5:**

\*\*\*\*NOTE: Please see \*\*\*\*NOTE after s. 224.725 (1m) (intro.) Do you want to replace the word "section" in created s. 224.72 (1r) (intro.) with "subchapter"?

#### **INSERT 11-22:**

\*\*\*\*NOTE: Is it accurate to say that the individuals listed in s. 224.725 (1m) are not only not required to be licensed but are not subject to the subchapter at all? Throughout the subchapter, the terms "mortgage loan originator" and "licensed mortgage loan originator" are used. Under the current law provision in s. 224.71 (6) (b), a person excluded from the definition of "mortgage loan originator" is clearly excluded from any provision of the subchapter that uses that term. Under the current law provision in s. 224.726, the exempted individuals are clearly not subject to the subchapter at all. I believe the introductory phrase to this new s. 224.725 (1m) creates significant ambiguity. For example, a registered mortgage loan originator is not required to be licensed. However, in s. 224.77 (1), the prohibitions do not apply to a "licensed mortgage loan originator," they apply to a "mortgage loan originator." Is a registered mortgage loan originator a "mortgage loan originator" within the meaning of s. 224.77 (1)? I believe the introductory provision to s. 224.725 (1m), and the way provisions are moved into this new s. 224.725 (1m) from ss. 224.71 (6) (b) and 224.726, create an ambiguity that is not present

(or recreated based on)

under current law. If it is consistent with your intent, perhaps this ambiguity can be resolved by simply incorporating into s. 224.725 (1m) (intro.) the language that, not only are the specified individuals exempt from licensing, but that provisions of the subchapter relating to mortgage loan originators do not apply to them.

## Gary, Aaron

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**From:** Schacht, Nathan  
**Sent:** Thursday, January 23, 2014 1:59 PM  
**To:** Gary, Aaron; Zikmund, Alison  
**Cc:** Grosz, Scott  
**Subject:** RE: Mortgage bill changes

Go ahead and do that.

Nathan Schacht  
Office of State Representative David Craig

---

**From:** Gary, Aaron  
**Sent:** Thursday, January 23, 2014 1:57 PM  
**To:** Schacht, Nathan; Zikmund, Alison  
**Cc:** Grosz, Scott  
**Subject:** RE: Mortgage bill changes

It is necessary if the other changes are made to delete the underscored part of bill section 20 (while retaining the renumbering).

---

**From:** Schacht, Nathan  
**Sent:** Thursday, January 23, 2014 1:45 PM  
**To:** Gary, Aaron; Zikmund, Alison  
**Cc:** Grosz, Scott  
**Subject:** RE: Mortgage bill changes

If that is what Scott said. My boss talked to him directly.

Nathan Schacht  
Office of State Representative David Craig

---

**From:** Gary, Aaron  
**Sent:** Thursday, January 23, 2014 1:43 PM  
**To:** Zikmund, Alison; Schacht, Nathan  
**Cc:** Grosz, Scott  
**Subject:** RE: Mortgage bill changes

Sorry, let me try that again. Yes, it is the two changes below that are coming out and p. 8 lines 8-10 stay in. But in addition to removing p. 15, lines 6-11, I also need to remove s. 224.725 (1m) (d) (intro.) (bill section 20).

I will get it right eventually.  
Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

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**From:** Zikmund, Alison  
**Sent:** Thursday, January 23, 2014 1:40 PM  
**To:** Gary, Aaron; Schacht, Nathan

**Cc:** Grosz, Scott

**Subject:** RE: Mortgage bill changes

Thanks Aaron. As far as I know, that is correct. Please draft a /1 introducible version including Scott's changes, which reflect a compromise between DFI and the realtors that was reached this morning.

Alison Zikmund

Office of Rep. Chad Weininger

(608) 266-1184

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**From:** Gary, Aaron

**Sent:** Thursday, January 23, 2014 1:38 PM

**To:** Schacht, Nathan; Zikmund, Alison

**Cc:** Grosz, Scott

**Subject:** RE: Mortgage bill changes

Quick follow up. I understand from Alison that it will be a /1 (which means notes come out).

Only the first of the two changes below are being removed.

In addition to removing p. 15, lines 6-11, p. 8 lines 8-10 also come out.

Aaron

Aaron R. Gary

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**From:** Gary, Aaron

**Sent:** Thursday, January 23, 2014 1:24 PM

**To:** Schacht, Nathan; Zikmund, Alison

**Cc:** Grosz, Scott

**Subject:** RE: Mortgage bill changes

Nate and Alison,

I am making the 3 changes Scott Grosz directed me to make on the draft, LRB-3853/P1. Two of the changes are to delete the changes per the email below and the third item is to modify a portion of the definition of real estate brokerage activity.

In this redraft, do you want me to eliminate the "\*\*\*\*NOTE"s within the draft or keep them in for now? Also, do you want a "/P2" version or a "/1"?

Thanks. Aaron

Aaron R. Gary

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**From:** Zikmund, Alison

**Sent:** Tuesday, January 21, 2014 4:38 PM

**To:** Gary, Aaron

**Subject:** RE: Mortgage bill changes

Aaron,

If the bill will not be ready today, will you please send us the language of this specific section so we can discuss it with our stakeholders? If not, we will be ready for it tomorrow.

Thanks.

Alison Zikmund  
Office of Rep. Chad Weininger  
(608) 266-1184

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**From:** Gary, Aaron  
**Sent:** Tuesday, January 21, 2014 2:55 PM  
**To:** Zikmund, Alison  
**Subject:** RE: Mortgage bill changes

I'll do what I can. The italicized language for (b) 2. really doesn't make a lot of sense. Somebody is apparently trying to pound a square peg (Truth in Lending Act) into a round hole (SAFE Act), and it just doesn't really work in this particular statute.

Aaron

Aaron R. Gary  
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**From:** Zikmund, Alison  
**Sent:** Tuesday, January 21, 2014 1:55 PM  
**To:** Gary, Aaron  
**Subject:** FW: Mortgage bill changes

Aaron,  
Please also add this to the bill.

Alison Zikmund  
Office of Rep. Chad Weininger  
(608) 266-1184

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**Wis. Stat. § 224.71 Definitions.** *In this subchapter:*

**(6)** (a) *"Mortgage loan originator" means an individual who is not excluded by par. (b) and who, for compensation or gain or in the expectation of compensation or gain, does any of the following:*

- 1. Takes a residential mortgage loan application.; and*
- 2. Offers or negotiates terms of a residential mortgage loan.*

**Wis. Stat. § 224.71**

**(b)2. add to the end of this section.** An individual who performs real estate brokerage activities only and is licensed under s. 452.03, unless the individual is compensated by a lender, mortgage broker, or another mortgage loan originator or by any agent of a lender, mortgage broker, or another mortgage loan originator. *Such a person is not paid by a loan originator or a creditor if the person is paid by a loan originator or creditor on behalf of a buyer or seller solely for performing real estate brokerage activities. Such a person is not paid for a particular consumer credit transaction subject to § 1026.36 if the person is paid compensation by a loan originator or creditor, or affiliate of the loan originator or creditor, solely for performing real estate brokerage activities in connection with a property owned by that loan originator or creditor.*

Nathan Schacht  
Office of State Representative David Craig

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**From:** Zikmund, Alison  
**Sent:** Tuesday, January 21, 2014 11:17 AM  
**To:** Schacht, Nathan  
**Subject:** FW: Mortgage bill changes

Bill drafter questions. See below.

Alison Zikmund  
Office of Rep. Chad Weininger  
(608) 266-1184

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**From:** Gary, Aaron  
**Sent:** Tuesday, January 21, 2014 11:09 AM  
**To:** Zikmund, Alison  
**Subject:** RE: Mortgage bill changes

Hi Alison,

The parts in green were included in the materials DFI sent to me, which I assume DFI generated.

The materials from DFI relating to registered entities and registered mortgage loan originators are very confusing. I think the source of the confusion is the definition/term "registered mortgage loan originator," but perhaps I am misunderstanding DFI's intent with respect to the proposed changes.

As background:

Under current law, a mortgage banker, mortgage broker, and mortgage loan originator must generally obtain a license from DFI. However, there is a major exception for a depository institution (let's say a bank) and its employees. A bank does not have to be licensed as a mortgage banker/broker and its employees do not have to be licensed mortgage loan originators. (I believe that, under federal law, the state cannot require a national bank or other federally-chartered financial institution or its employees to hold such licenses and, as a matter of parity, the state gives the same treatment to state banks etc. and their employees.)

The proposed changes given to me by DFI allow a depository institution (which is not required to obtain a license) to voluntarily register with DFI and sponsor a licensed mortgage loan originator. Based on the last draft I did for you, LRB-3753, I assume the intent is to allow bank-owned insurance companies to sponsor licensed mortgage loan originators that are not employees but are contract agents. (If the individual were actually an employee of the depository institution, neither the employee nor the depository institution would be required to be licensed or registered at all.)

DFI's proposed changes also create a definition of, and use the term, "registered mortgage loan originator." At first, I thought that a "registered mortgage loan originator" must be an individual who works for a "registered entity." But the materials sent to me by DFI aren't structured that way. In fact, a "registered mortgage loan originator" doesn't seem to be registered in any way. The "registered mortgage loan originator" is not licensed and is just an exempt employee of a depository institution. In contrast, under the proposed changes, the registered entity actually sponsors a licensed mortgage loan originator.

Yes, this is very confusing. If my understanding is correct, I think we need to eliminate the definition of "registered mortgage loan originator" and deal with the concept in a different way. In addition to the confusion and the fact that the individual is not actually "registered" and is not sponsored by a registered entity, the term creates a host of other problems in this subchapter. If my understanding is incorrect, and the registered entity registers with DFI in order to sponsor an unlicensed mortgage loan originator, then the materials given to me by DFI are so flawed on this topic as to be mostly useless.

1/23 From Scott Grosz

change

224.71(13)(c)

insert "Providing financing for the transaction does not include use by real estate licensees of forms approved under S. REEB 16.03, Wis Admin Code."